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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 4029 of 2011**

Ramadhar Patel S/o late Shri Bhagatram, R/o village Donganala, P.S.
Pali, Post Bawsahi, District Korba (CG)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Department of Panchayat & Rural Development, D.K.S. Bhawan, Mantralaya, Raipur, Chhattisgarh
2. Deputy Director, Directorate of Panchayat and Social Welfare Department, District Korba (CG)
3. Chief Executive Officer, Janpad Panchayat Pali, Block Pali, District Korba (CG)
4. Sarpanch, Gram Panchayat Donganala, Block Pali, District Korba (CG)

---- Respondents

For Petitioner	:	Dr. Shailesh Ahuja, Advocate
For State	:	Mr. Ayaz Naved, Govt. Advocate with Ms. Abhyunati Singh, P.L.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****09.03.2020**

1. The challenge in the present writ petition is to the order Annexure P-1 dated 11.05.2007 whereby the services of the petitioner were terminated from the post of Secretary (Panchayat Karmi).
2. The issue involved in the present writ petition is whether the order of termination of the petitioner from the post of Panchayat Karmi could have been passed without due compliance of the statutory provisions

as is required under Rule 7 of the Chhattisgarh Panchayat Service (Discipline and Appeal) Rules, 1999 (hereinafter referred as “the Rules of 1999”).

3. The brief facts relevant for adjudication of the present writ petition are that the petitioner vide order dated 17.10.1995 was appointed as Panchayat Secretary of Gram Panchayat Donganala, Block Pali, District Korba, Chhattisgarh. Subsequently, on 27.01.2007, a show cause notice was issued to the petitioner alleging certain misconduct against the petitioner in respect of false signature being put in the Raion Card and frivolous funds being withdrawn. The petitioner immediately submitted reply to the show cause notice vide Annexure P-3 dated 01.02.2007. Thereafter, the respondent no.3 withdrew the financial powers that were with the petitioner in the capacity of a Panchayat Secretary and ordered him to discharge other duties as Panchayat Karmi. The petitioner was again issued with a show cause notice in respect of as to why his services should not be terminated. Immediately thereafter the respondent no.2 passed the impugned order Annexure P-1 dated 11.05.2007 terminating the petitioner as a Panchayat Secretary.
4. The solitary ground of challenge by the petitioner is that the impugned order Annexure P-1 dated 11.05.2007 is one which has been passed without following Rule-7 of the Rules of 1999 which lays down certain procedure for imposing major penalty. The contention of the petitioner is that the conditions stipulated under Rule-7 of the Rules of 1999 have not been followed by the authority concerned before passing the impugned order and therefore, the impugned order is per se illegal and

bad in law. Counsel for the petitioner relied upon the judgment of this High Court i.e. WPS No. 857 of 2007 decided on 06.03.2018 where an identical issue came up for hearing and the High Court had allowed the said writ petition.

5. The present writ petition was filed as early as in the year 2011. The State appears on behalf of the respondents 1 & 2. Though more than 10 years have passed, no reply has been filed by any of the respondents. On the previous date of hearing, considering the fact that the matter is 10 years old and that there was no representation on behalf of the respondents 3 & 4, this Court had directed the petitioner to serve Dasti notice to the respondents 3 & 4. The Dasti notice was also duly served and effected upon the respondents 3 & 4. In spite of Dasti service being made, there is no representation on behalf of the respondents 3 & 4.
6. The state counsel, so far as the stand of the State Govt. is concerned, submits that Annexure P-4 which was issued by the Chief Executive Officer, Janpad Panchayat, Pali based upon which the impugned order Annexure P-1 has been passed. The state counsel further takes the stand that the writ petition has to be effectively defended by respondents 3 & 4 under whom the petitioner was directly discharging his duties and it is they who have alleged misconduct against the petitioner and it is they who have to largely defend the action of the respondents.
7. Considering the fact that the writ petition is 10 years old, this Court does not intend to keep the matter pending awaiting appearance of the respondents 3 & 4.

8. So far as the law in respect of removal of Panchayat Karmi/Panchayat Secretary is concerned, Rule-7 of the Rules of 1999 governs the field. The procedure for imposing major penalty is envisaged under Rule-7 of the Rules of 1999.
9. Undoubtedly, a show cause notice was issued to the petitioner to which the petitioner had also promptly given reply. Thereafter, the requirement under Rule-7 of the Rules of 1999 does not seem to have been followed by any of the respondents before issuance of the impugned order Annexure P-1.
10. The law as regards whether a Panchayat Karmi/Panchayat Secretary could be dismissed from service on allegation of misconduct without holding an enquiry is no longer res integra. It has been decided by a catena of decisions of this Court that in the absence of the compliance of statutory provisions as is required under Rule-7 of the Rules of 1999, any decision taken by the authority concerned would not be sustainable in the eye of law. As regards Panchayat Karmis, this Court in the case of Dhaluram Kosaria Vs. State of CG and Others, 2006 (2) CGLJ 186 clearly held that Panchayat Karmis appointed from Gram Panchayat are entitled to protection under Rule 7 of Panchayat Appeal And Discipline Rules of 1999. Rule 7 of the Rules of 1999 is extracted herein below :-

7. "Procedure for imposing major penalties :- (1) No order, imposing on a member of the Panchayat Service, any of the penalties specified in clause (iv) to (vii) of rule 5 shall be passed except after a formal inquiry is held as far as may be, in the manner hereinafter provided.

(2) When an order for formal inquiry has been made, the disciplinary authority shall frame Definite charges on the basis of allegations and shall communicate such charges,

along with the statement of the allegations, to the member of Panchayat Service and also require him to submit, within such time as may be specified a written statement of defence and also to state whether he desires to be heard in person.

(3) The person against whom inquiry is to be held shall, for the purpose of preparing toe defence, be permitted to inspect and take extracts from such records as he may specify:

Provided that such permission may be refused if, for reasons to be recorded in writing, in the opinion of the Enquiry Officer such records are not relevant for the purpose or it is against the public interest to allow his access thereto.

(4) On the receipt of the written statement of defence or if any such statement is not received within the time specified, the disciplinary authority may himself enquire into sucit of the charges as are not admitted or appoint an Enquiry Officer to hold the inquiry and forward to him his report and, if advised, his recommendation along with all the inquiry papers.

(5) The disciplinary authority may nominate any person to present the case in support of the charges before the Enquiry Officer. The member of the Panchayat Service may present his case with the assistance of any other Panchayat Servant of State Government Servant approved by the Enquiry Officer but may not engage a legal practitioner for the purpose, unless the person nominated by the disciplinary authority as aforesaid is a legal practitioner or unless the disciplinary authority having regard to the circumstances of the case so permits.

(6) If the servant of the Panchayat Service desires to be heard in person, he shall be so heard. If he so desires or if the disciplinary authority so directs, an oral enquiry shall be held by the Enquiry Officer. At such inquiry evidence shall be heard as to such of the allegations as are not admitted and the person charged shall be entitled to cross examine the witness, to give evidence in person, to produce documentary evidence, if any, and to have such witness called as he may wish :

Provided that the Enquiry Officer may, for reasons to be recorded in writing , refuse to call a witness.

(7) At the conclusion of the inquiry, the Enquiry Officer shall prepare a report of the inquiry, recording his findings on each of the charges together with reasons therefor.

(8) The proceedings conducted against the persons charged shall contain a sufficient record of

- (i) the charges framed against such person and the statement of allegations ;
- (ii) the written statement of defence if any ;
- (iii) the oral evidence taken in the course of the inquiry ;
- (iv) the documentary evidence considered in the course of the inquiry~
- (v) the orders, if any, made by the Enquiry Officer or the disciplinary authority as the case may be with regard to the inquiry ;
- (vi) a report setting out the findings on each charge and the reasons therefor.

(9) the Enquiry Officer, if he is other than the disciplinary authority, shall submit the records of proceedings mentioned in Clause (8) above to the disciplinary authority without recommendation relating to the penalty to be imposed. The disciplinary authority shall consider the record of the enquiry and its findings on each charge, having regard to the findings on the charges and the record (if the proceedings) if he is of the opinion that any of the penalties specified in clauses (iv) to (vii) of rule 5 should be imposed, it shall be furnish to the person charged a copy of the report of the Enquiry Officer a statement of its findings together with brief reasons for disagreement, if any, with the findings of the Enquiry Officer.

(10) The disciplinary authority shall consider the representation, if any, made by the person charged in response to the notice and determine the penalty, if any, should be imposed and shall pass appropriate order on the case.

(11) The orders passed by the disciplinary authority shall be communicated to the member of the Panchayat Service, who shall also be supplied with a copy of the report of the Enquiry Officer and where, disciplinary authority is not the Enquiry Officer, a statement of its findings together with the brief reasons for disagreement, if any, with the findings of the Enquiry Officer, unless they have already been supplied to the person charged.”

11. Some of similar judgments dealing with Rule 7 of the Rules, 1999 passed by this High Court are:

- i) Ilesh Kukar Sahu Vs. State of C.G. & Ors., 2010 (2) CGLJ 76

- ii) Aghan Singh Jangade Vs. State of CG & Ors., 2009 (3) CGLJ 72
- iii) Chandikeshwar Singh Vs. State of CG & Ors, 2007 (3) MPHT 106 CG
- iv) Ravindra Kishore Chandra Vs. State of CG & Ors., WPS No. 2527/08 decided on 06.01.2010

12. In view of the authoritative decision rendered by this Court in the preceding paragraphs, this Court has no hesitation in reaching to the conclusion that the impugned order Annexure P-1 dated 11.05.2007 has been passed in total contravention to the provisions of Rule-7 of the Rules of 1999 and the same is not sustainable in law.

13. The impugned order dated 11.05.2007 therefore deserves to be and is accordingly set aside/quashed. The petitioner shall be entitled to be reinstated in service.

14. However, for the reasons that the petitioner was out of employment all these period and also considering the fact that though the impugned order was passed in the year 2007 and the petitioner filed the writ petition after 4 years i.e. in the year 2011, this Court is of the opinion that applying the doctrine of “no work no pay” it is not a fit case where the petitioner can be granted back wages for the intervening period. Accordingly, the reinstatement shall be without any back wages. However, the said intervening period would be counted as period spent on duty for all other purposes by giving him notional fixation.

Sd/-
P. Sam Koshy
Judge